



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable J. S. Murchison  
Executive Director  
State Department of Public Welfare  
Austin, Texas

Dear Sir:

Opinion No. O-3081

Re: An ophthalmologist who is a regular employee of a State eleemosynary institution cannot receive any pay from the State of Texas where he is also hired by the State Department of Public Welfare to examine applicants for assistance as needy blind, on a case by case basis.

Your opinion request of Gerald C. Mann, Attorney General of Texas, has been received wherein your writing appears as follows:

"The State Department of Public Welfare law, under H. B. 611, 47th Legislature, charges the State Department of Public Welfare with the responsibility of administering assistance to the Needy Blind. Section 15, H. B. 611 referred to, provides as follows:

"No application for assistance as a needy blind person shall be approved until the applicant shall have been examined by an ophthalmologist or physician skilled in treatment of diseases of the eye and who is licensed to practice medicine in Texas, and who has been approved by the State Department to make such examination. The examining ophthalmologist or physician shall certify, in writing upon forms prescribed by the State Department as to the cause, diagnosis, and prognosis, and shall make

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recommendations as to the medical and surgical treatment. The State Department shall adopt a reasonable fee schedule for such examinations. Such fees shall be paid out of the funds appropriated to the State Department for the purpose of assistance to needy blind persons under the provisions of this Act or for administrative expense.'

"In carrying out the provisions of this section of the law, it will be necessary for the State Department of Public Welfare to obtain the services of an ophthalmologist for consultative service to the Department. The ophthalmologist selected is on the regular payroll of the State School for the Blind during nine months of each year--September through May. The State Department of Public Welfare wishes to obtain the professional services of this ophthalmologist on an actual case by case basis, said ophthalmologist to submit a monthly bill for services rendered on a case basis during the nine month period in which he is on the payroll of the State School for the Blind."

Section 33 of Article 16 of the Constitution of Texas prevents compensation of any agent, officer or appointee holding two State positions as follows:

"The accounting officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. . . ."

The ophthalmologist you describe will not come within the certain exceptions elsewhere prescribed in the Constitution.

In opinion No. 0-2607 this department ruled that an eye, ear, nose and throat specialist employed part time in

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one State institution and accepting and holding a similar place in another State institution at the same time could not receive compensation for either position during the time both positions are held. A copy of this opinion is enclosed.

We believe that the ophthalmologist cannot accept and serve and receive pay from the State of Texas in another capacity in behalf of the Department of Public Welfare; and the fact that he may be paid on a case by case basis by the Department of Public Welfare will not vary our opinion.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Pat Coon*  
Pat Coon  
Assistant

PC:GO

ENCLOSURE

APPROVED AUG 21, 1941

*George B. Mann*  
ATTORNEY GENERAL OF TEXAS

